

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

ORDER AMENDING LOCAL RULES

Appropriate public notice and an opportunity to comment having been given pursuant to Rule 83 of the Federal Rules of Civil Procedure, and pursuant to a majority vote of the active judges of this court,

IT IS ORDERED that effective December 1, 2009, **Rules 5.7.08W, 7.5W, 23.1E, 23.1M&W, 41.3W, 45.3E&W, 51.1W, 54.3E, 54.3M&W, 54.4M&W, 54.5, 55.1M&W, 73.2.1W, 74.1W** and **Local Admiralty Rule 64.1W** of the Uniform Local Rules of the United States District Courts for the Eastern, Middle and Western Districts of Louisiana are amended as follows:

LR 5.7.08W Signatures

The user log-in and password required to submit documents to the Electronic Filing System shall be the User's signature for all purposes.

Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) indicating the consent of the parties who did not electronically file the document. Consent may be indicated by the filer by including an "s/ and the name of the consenting attorney(s)" on the document to be filed electronically (e.g. "S/John Doe," "s/Jane Smith,"etc.). By using "s/ and another attorney's name" the filing attorney certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filing attorney has their actual authority to submit the document electronically. The filing attorney shall retain any records evidencing this concurrence for future production, if necessary, until 1 year from the expiration of all time periods for appeals. A

non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signatures themselves must file an objection to the filing of the document within 14 days from service of the document.

LR7.5W Response and Memorandum

If the respondent opposes a motion, he or she shall file a response, including opposing affidavits, memorandum, and such supporting documents as are then available, within 21 days after service of the motion. Memoranda shall contain a concise statement of reasons in opposition to the motion, and a citation of authorities upon which respondent relies. For good cause appearing therefor, a respondent may be required to file a response and supporting documents, including memoranda, within such shorter or longer period of time as the court may order at the discretion of the judge, or upon written ex parte motion served on all parties.

LR23.1E Class Action

In any case sought to be maintained as a class action:

- A. The complaint shall bear next to its caption the designation, "Complaint- Class Action";
 - 1. Refer to the portions of *FRCvP* 23 under which it is claimed that the suit is properly maintainable as a class action;
 - 2. Make allegations thought to justify the maintenance of the claim as a class action, including, but not necessarily limited to:
 - a. the size (or approximate size) and definition of the alleged class,
 - b. the basis upon which the plaintiff (or plaintiffs) claims,
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- (i) to be an adequate representative of the class, or
 - (ii) if the class is comprised of defendants, that those named as parties are adequate representatives of the class,
 - 3. The alleged questions of law *or* fact claimed to be common to the class; and
 - 4. In actions claimed to be maintainable as class actions under *FRCvP 23(b)(3)*, allegations thought to support the findings required by that subdivision.
 - B. Within 91 days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a certification under *FRCvP 23(c)(1)*, as to whether the case is to be maintained as a class action.
 - C. The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.
 - D.
 - 1. Whenever a party or counsel desires to prohibit another party or counsel from communicating concerning such action with any potential or actual class member not a formal party to the action, he or she shall apply in writing to the court for such an order. In such application, the parties must set forth with particularity the abuses they fear will result from such communication, along with the form of remedy they believe would be appropriate to prevent frustration of the policies of Rule 23.
 - 2. The court will not enter an order prohibiting communication with members of the class in the absence of a clear record (and when necessary, an evidentiary hearing) reflecting:
 - a. specific findings regarding the abuse the court seeks to prevent;
 - b. the need for such an order, weighing the abuse sought to be corrected and the effect it will have on the right of a party to proceed pursuant to Rule 23 without interference.
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3. Any attorney who communicates with the class shall preserve and retain in his or her files, until the final conclusion of the action, a copy of all communications which he or she has sent to any members of the class or potential class.

LR23.1M & W Class Action

In any case sought to be maintained as a class action:

- A. The complaint shall bear next to its caption the designation, "Complaint- Class Action";
 1. Refer to the portions of *FRCvP* 23 under which it is claimed that the suit is properly maintainable as a class action;
 2. Make allegations thought to justify the maintenance of the claim as a class action, including, but not necessarily limited to:
 - a. the size (or approximate size) and definition of the alleged class,
 - b. the basis upon which the plaintiff (or plaintiffs) claims,
 - (i) to be an adequate representative of the class, or
 - (ii) if the class is comprised of defendants, that those named as parties are adequate representatives of the class,
 3. The alleged questions of law *or* fact claimed to be common to the class; and
 4. In actions claimed to be maintainable as class actions under *FRCvP* 23(b)(3), allegations thought to support the findings required by that subdivision.
 - B. Within 90 days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a certification under *FRCvP* 23(c)(1), as to whether the case is to be maintained as a class action.
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- C. The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.
- D.
 - 1. Whenever a party or counsel desires to prohibit another party or counsel from communicating concerning such action with any potential or actual class member not a formal party to the action, he or she shall apply in writing to the court for such an order. In such application, the parties must set forth with particularity the abuses they fear will result from such communication, along with the form of remedy they believe would be appropriate to prevent frustration of the policies of Rule 23.
 - 2. The court will not enter an order prohibiting communication with members of the class in the absence of a clear record (and when necessary, an evidentiary hearing) reflecting:
 - a. specific findings regarding the abuse the court seeks to prevent;
 - b. the need for such an order, weighing the abuse sought to be corrected and the effect it will have on the right of a party to proceed pursuant to Rule 23 without interference.
 - 3. Any attorney who communicates with the class shall preserve and retain in his or her files, until the final conclusion of the action, a copy of all communications which he or she has sent to any members of the class or potential class.

LR41.3W Dismissal for Failure to Prosecute

A civil action may be dismissed by the clerk of court or any judge of this court for lack of prosecution as follows:

- A. Where no service of process has been made within 120 days after filing of the complaint;
- B. Where no responsive pleadings have been filed or default has been entered within 60 days after service of process; or
- C. Where a cause has been pending six months without proceedings being taken within such period. This provision shall not apply if the cause is awaiting action by the court.

Prior to issuance of a dismissal, notice shall be sent to the plaintiff, and plaintiff shall be

allowed 14 calendar days from mailing of the notice within which to file evidence of good cause for plaintiff's failure to act. If no response is received within the allotted time, the clerk may dismiss the civil action. If a timely response is filed, a district judge or magistrate judge may order additional time within which to take action, dismiss the civil action without prejudice or make any other appropriate order.

Dismissal under this rule shall be without prejudice unless delay has resulted in prejudice to an opposing party. The Order of Dismissal shall allow for reinstatement of the civil action within 30 days for good cause shown.

The failure of an attorney or pro se litigant to keep the court apprised of an address change may be considered cause for dismissal for failure to prosecute when a notice is returned to the court for the reason of an incorrect address and no correction is made to the address for a period of 30 days.

LR45.3E&W Subpoena Duces Tecum to Hospitals

A. When a subpoena duces tecum is served upon the custodian of records or other qualified witness from a hospital or other health care facility in an action in which the hospital or facility is not a party and such subpoena requires the production for trial of all or any part of the records of the hospital or facility relating to the care and treatment of a patient in such hospital or facility, it shall be sufficient compliance therewith if the custodian or other officer of the hospital or facility delivers by registered mail or by hand a true and correct copy of all records described in such subpoena to the clerk of court or other tribunal, or if there is no clerk, then the court or other tribunal, together with the affidavit described in Subsection B. Production of the record shall occur prior to the time fixed for the trial, but no earlier than seven working days before the trial date unless otherwise directed

in the pretrial order. This section is limited to procedures for complying with a subpoena duces tecum for purposes of trial and shall not affect the rights of parties to production of documents pursuant to laws governing discovery or other laws pertaining thereto.

B. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

1. That the affiant is the duly authorized custodian of the records and has authority to certify the records.
2. That the copy is a true copy of all records described in the subpoena.
3. That the records were prepared by the personnel of the hospital or facility, staff physicians, or persons acting under the control of either in the ordinary course of the business of the hospital or facility at or near the time of the act, condition, or event.

C. If the hospital or facility has none of the records described, or only part thereof, the custodian shall so state in the affidavit, and deliver the affidavit and such records as are available in the manner provided in Subsection A.

LR51.1W Jury Instructions

When a trial is to be held before a jury, counsel for all parties shall confer and prepare proposed joint jury instructions. If counsel are unable to agree as to any specific jury instruction, a separate proposal for such instruction may be submitted. If a separate proposal is submitted, it shall be supported by a memorandum of authorities. The joint and separate proposed jury instructions shall be filed with the clerk of court and a copy shall be provided to the judge before whom the trial is to be held at least seven days in advance of the date on which the jury trial is scheduled. This Rule shall not be interpreted or enforced to prevent a party from filing written requests pursuant to *FRCvP* 51 at the close of evidence or at such earlier time during trial as the court may reasonably direct.

LR54.3E Memorandum of Costs

Within 35 days after receiving notice of entry of judgment, unless otherwise ordered by the court, the party in whose favor judgment is rendered and who claims and is allowed costs, shall serve on the attorney for the adverse party and file with the clerk a notice of application to have the costs taxed, together with a memorandum signed by the attorney of record stating that the items are correct and that the costs have been necessarily incurred.

LR54.3M & W Memorandum of Costs

Within 30 days after receiving notice of entry of judgment, unless otherwise ordered by the court, the party in whose favor judgment is rendered and who claims and is allowed costs, shall serve on the attorney for the adverse party and file with the clerk a notice of application to have the costs taxed, together with a memorandum signed by the attorney of record stating that the items are correct and that the costs have been necessarily incurred.

LR54.4M & W Objections

Specific objections may be made within seven days to any item of costs supported by affidavit or other evidence, which may be rebutted. The clerk shall thereupon tax the costs.

LR54.5 Review of Taxation of Costs

A dissatisfied party may request within seven days that the court review the action of the clerk, in accordance with *FRCvP 54(d)*.

LR55.1M & W Default Judgment

In addition to the provisions of *FRCvP* 55, the following rules apply to default judgments:

- A. All requests for entry of default shall be made to the clerk in writing;
- B. The clerk shall mail by regular mail notice of entry of default to each defendant or his or her attorney at his or her last known address;
- C. A judgment of default shall not be entered until 14 days after entry of default.

LR73.2.1W Consent and Referral to Magistrate Judge in Prisoner, Detainee and Habeas Cases

The special procedures set forth hereinafter apply to: (1) applications made pursuant to 28 U.S.C. § 2254 for post-trial relief by an individual convicted of state criminal offenses; (2) prisoner and detainee cases brought pursuant to 42 U.S.C. § 1983; (3) prisoner and detainee cases brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 91 S.Ct. 1999 (1971); (4) applications for relief under 28 U.S.C. § 2241; and (5) claims by a prisoner or a detainee brought pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671, *et. seq.*

In any case where LR3.2W requires that a complaint or petition be filed on a court approved form each petitioner shall, at the time the petition or complaint is filed, indicate on the appropriate page of the form whether or not petitioner consents to the exercise by a magistrate judge of civil jurisdiction over the case, as authorized by 28 U.S.C. § 636(c). The election shall be filed with the petition or complaint. In all other cases governed by this rule the Clerk shall, immediately upon the filing of the petition or complaint, provide each petitioner with a court approved form notifying each petitioner of their opportunity to consent to the exercise of civil jurisdiction pursuant to 28 U.S.C. § 636(c). In a case not governed by LR3.2W the petitioner must make an election and return the form to the Clerk within 21 days of the Clerk's depositing of the form in the U.S. mail.

Any petitioner is free to elect to not consent to the exercise of jurisdiction by the magistrate judge without adverse substantive consequences. However, each petitioner must make a timely election. If a petitioner fails to make an election and deliver it to the Clerk in a timely manner, that petitioner will be considered as having consented in fact to the magistrate's exercise of case-dispositive jurisdiction.

Upon the initial appearance by a defendant the Clerk shall provide that defendant with a court approved form notifying each defendant of their opportunity to consent to the exercise of civil jurisdiction pursuant to 28 U.S.C. § 636(c), and requiring the defendant to elect whether or not the defendant consents to the exercise by a magistrate judge of such jurisdiction. The defendant is free to elect to not consent to the exercise of such jurisdiction by the magistrate judge without adverse substantive consequences. However, the defendant must make the election and deliver it to the Clerk within 21 days of the Clerk's depositing of the form in the U.S. mail. If a defendant fails to make an election and return it to the Clerk in a timely manner, that defendant will be considered as having consented in fact to the magistrate's exercise of case-dispositive jurisdiction.

A district judge or magistrate judge shall not be informed of a party's election unless all parties have consented, either in writing or in fact, to the referral of the matter to the magistrate judge.

If all parties have consented to a magistrate judge's exercise of jurisdiction pursuant to 28 U.S.C. § 636(c), either in writing or in fact, the district judge to whom the case has been assigned may refer the case to the magistrate judges for the exercise of such jurisdiction. Subsequent to the order of reference any party that has not consented in writing may, prior to making a post-referral appearance, file a written objection to the referral, and, in that case the district judge will vacate the order of reference. However, any party that makes an appearance subsequent to the order of

reference without written objection to the reference shall be conclusively presumed to have consented to the magistrate judge's exercise of jurisdiction pursuant to 28 U.S.C. § 636(c). Unless and until all parties who have not expressly consented to the magistrate judge's exercise of jurisdiction have made such a post-reference appearance conclusively establishing their implied consent to the magistrate judge's exercise of jurisdiction, the magistrate judge shall not exercise jurisdiction or powers under 28 U.S.C. § 636(c).

LR74.1W Method of Appeal

A. **Appeal of Non-dispositive Matters.** A party may appeal from a magistrate judge's order by filing with the clerk of court, within 14 days after being served with a copy of the order, a written statement of appeal specifically designating the order or part thereof appealed from, the basis for the objection, and a written memorandum in support thereof. A copy of the appeal shall be served on the magistrate judge and all parties. The time period allowed for appeal may be modified by the magistrate judge or district judge. A motion to modify or extend the time to file an appeal of a magistrate's order shall be accompanied either by a certificate by the movant that there is or is not opposition to the request or a statement of the efforts made by the movant to determine whether or not there is opposition in compliance with LR7.9W. The district judge shall consider the appeal and set aside any portion of the order found to be clearly erroneous or contrary to law. The district judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule.

B. **Reports and Recommendations.** A party may object to a magistrate judge's proposed findings, recommendations or report by filing with the clerk within 14 days after being served with a copy thereof, a written objection which specifically identifies the portion or portions of the proposed findings, recommendations or report to which objection is made, the basis for such

objection and a written memorandum in support thereof. The magistrate judge or district judge may modify the time period allowed for the filing of such objections. Any party may respond to another party's objections within 14 days after being served with a copy thereof.


A district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject or modify in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

LAR64.1W Publication and Time to Claim and Answer Where Publication Necessary and Under Supplemental Rule C(4)

In all cases where publication is necessary under Admiralty Rule C(4), the time for filing a statement of interest in or right against the property is hereby extended for a period of 21 days from the date of the publication.

The published notice shall contain the title and the number of the suit, the date of the arrest and identity of the property arrested, the name of the marshal, and the name and address of the attorney for the plaintiff. It shall also state that claimants must file their statement of interest in or right against the property pursuant to Rule C(6) with the clerk and serve them on the attorney for plaintiff within 21 days after the date of first publication, or within such further time as may be allowed by the court, and must serve their answers within 21 days after the filing of their statements of interest or right; that, if they do not, default may be entered and condemnation ordered; and that application for intervention under *FRCvP* 24, by persons claiming maritime liens or other interests may be untimely if not filed within the time allowed for claims to possession.

Monroe, Louisiana, this 10th day of December, 2009.


ROBERT G. JAMES, CHIEF JUDGE
UNITED STATES DISTRICT COURT
